IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 3892 OF 1992

Shri Jagannath Trimbak Panhale
& Anr. .. Petitioners
versus
Sau.Shantabai Sadashiv Pawar .. Respondent

...

Mr.Jaydeep Deo i/b P.K. Dhakephalkar for the petitioners.
Mr.V.Z. Kankaria for the respondent.

CORAM : D.G. KARNIK, J
DATED : 26th August 2004

P.C:-

1. By this petition, the petitioners challenge the judgement and order dated 2nd May 1992 passed by the learned District Judge Nashik dismissing Civil Appeal No.358 of 1989 and thereby confirming a decree for possession passed in favour of the respondent

landlady.

2. The respondent is an owner of the suit property bearing municipal house no.1404, City Survey No.2017 having purchased it in December 1976. The father of the petitioners who are brothers, was previously a tenant of two rooms situated on the eastern side of the ground floor of the suit property on a monthly rent of Rs.20/-. In addition thereto, one room on the western side of the suit property was in occupation of the petitioner no.1 as a tenant on the monthly rent of Rs.10/-. The father of the petitioners had died prior to the respondent's purchase of the suit property and the petitioners were in occupation of both the premises. After the purchase, the petitioners paid the rent to the respondent upto September 1977, but fell in arrears from 1st October 1977. By a notice of demand dated 1st December 1983 (Exhibit-19) addressed to both the petitioners, the respondent demanded arrears of rent of both the premises from the respondents. The notice was served on the petitioner no.1 but could not be served on the petitioner no.2. Therefore, the respondent issued a fresh notice dated 9th January 1984 to the petitioner no.1 which was served on him at

the address of his employer. As the petitioners failed and neglected to pay the rent, despite the two notices of demand dated 1st December 1983 and 9th January 1984, the respondent filed a suit bearing regular Civil Suit no.1156 of 1986 for possession in the Court of Civil Judge, Junior Division, Nashik. By a judgement and order dated 23rd December 1988, the learned Civil Judge Jr. Division passed a decree for possession. The appeal filed by the petitioner was dismissed by a judgement and order dated 2nd May 1992. That judgement is impugned in the present petition.

3. In the suit the respondent plaintiff averred that only the petitioner no.1 was a tenant in respect of both the premises and petitioner was a sub-tenant. The trial Court held that the petitioner no.1 alone was the tenant and defendant no.2 was a sub tenant and it passed a decree on the ground of default as well as on the ground of sub letting. The appellate Court also held that petitioner no.1 alone was a tenant. It however held that petitioner no.2 was not a sub-tenant but was a licensee. It also held that the petitioners were defaulters in payment of rent and confirmed the decree for possession.

4. Admittedly, there are two different tenements. One tenant of one room situated on the western side is let out to the petitioner no.1. The other tenant of two rooms on the eastern side was let out to the father of the petitioners. It appears that the father of the petitioners and the petitioner no.1 were residing separately in their respective tenements. The father was residing in the two room tenement on the eastern side and petitioner no.1 was residing in the one room tenement on the western side. Admittedly, when the father of the petitioners died, the respondent was not the owner of the property. Therefore, the respondent no.1 cannot have personal knowledge as to where the petitioner no.2 was residing. The petitioner no.2 has stated on oath that he was residing with his father in the suit premises i.e. in the eastern side two rooms. The petitioner no.1 was residing separately in the western side tenement, and was not residing with the father. Therefore, petitioner no.2 who was residing with the father would inherit the tenancy in respect of two rooms on the eastern side. Therefore, the Courts below erred in law in holding that the petitioner no.1 only was a tenant and the petitioner no.2 was either a sub-tenant or a licensee of the petitioner no.1.

5. I have perused the two notices of demand. The first notice of demand dated 9th January 1984 is addressed to both the petitioners. In paragraph no.3 of the notice, the respondent has stated that the addressees i.e. meaning thereby both the petitioners, are the tenants. The notice states that there are two separate tenements and specifies the rents have two separate tenements at Rs.20/- and Rs.10/- respectively. This was the first notice issued after the purchase of the suit property. It was not stated in the notice that petitioner no.1 alone was the tenant of both the premises. Both the Courts below have overlooked the admission in the notice that both the petitioners were the tenants. In the circumstances, the Courts below have ignored admissible evidence and wrongly come to the conclusion that petitioner no.2 was either a sub-tenant or a licensee of petitioner no.1. The finding of sub-tenancy/license is therefore, required to be reversed, having been rendered overlooking admissible evidence.

6. The notice of demand was a composite notice demanding the arrears of rent for the two premises

together. As I have held that petitioner no.2 only has inherited the tenancy in respect of eastern side block of two rooms and petitioner no.1 is a tenant of one room in western side, a composite notice of demand could not be issued to the two tenants, in respect of two separate tenancies. One common suit for possession of two tenements let out to two different persons, though brothers, could not be filed. The notice was thus bad in law as also the suit. The Courts below therefore, erred in law in passing a decree for possession against the petitioners on the ground of default.

7. For these reasons, the judgement of the Courts below cannot be sustained.

8. Petition is accordingly allowed. Rule is made absolute. In the facts and circumstances of the case, parties shall bear their own costs.

D.G. KARNIK, J